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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

In re JULIO A, a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. JULIO A, Defendant and Appellant.	G040012 (Super. Ct. No. DL030198) O P I N I O N

Appeal from a judgment of the Superior Court of Orange County, Joy Markman, Judge. Affirmed.

John L. Dodd, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch and Scott C. Taylor, Deputy Attorneys General, for Plaintiff and Respondent.

THE COURT:*

Minor, Julio A. was declared a ward of the juvenile court when the court sustained a petition for violating section 148(a)(1) of the Penal Code. Julio contends the disposition should be reversed and the petition dismissed because there was no substantial evidence that he delayed a peace officer. In the alternative, Julio contends that if his wardship is not reversed, the search term of his probation must be stricken on the basis that it bears no relationship to the offense that was found true and therefore it is overbroad.

FACTS

Officer Gentner of the Buena Park Police Department testified that while on patrol he received a call from dispatch that about four or five "young kids" were hanging out smoking marijuana in the patio area in the alley of an apartment complex at 5822 Fullerton avenue. Gentner testified that he was driving a black and white Buena Park Police unit with overhead lights and wearing a polo shirt with patches on his chest and shoulders identifying him as a Buena Park police officer when he arrived at the location about one minute after receiving the call. According to Gentner, after he got out of his patrol unit, he was about 15 yards away when he first saw Julio with four other individuals at the apartment complex. According to the Gentner, he recognized Julio from a prior encounter two or three weeks earlier and after he made eye contact with Julio, Julio and company started running through the apartment complex away from the officer. According to Gentner, he immediately started running after the subjects, including Julio, while yelling "stop. Police. Stop. Police." When asked how many times he yelled "stop. Police," Gentner testified "at least three to four, maybe even five times" in a loud voice. According to Gentner, Julio never stopped in response to his verbal demands, but eventually stopped when he and the other four individuals ran into

* Before Rylaarsdam, Acting P. J., Fybel, J., and Ikola, J.

an officer at the other end of the complex who was able to "[get] them down by gun point."

Julio also testified at his trial, and his testimony contradicted Officer Gentner's testimony. According to Julio, he was in the alley with four other individuals when he saw a police car go by. According to Julio, he took off running when he saw the police car traveling down the street so that he would not be detained. Julio testified that on the day he was arrested, not only did he not hear Officer Gentner yell at him to stop, but he never even saw Officer Gentner on the day of the offense. When asked on cross-examination if he ran because he didn't want to get caught in the act, Julio responded, "yes." Julio contends that based on these facts, there was no substantial evidence to support a true finding that he obstructed, resisted, or delayed Officer Gentner in the performance of his duties.

DISCUSSION

"'The test on appeal is whether substantial evidence supports the conclusion of the trier of fact, not whether the evidence proves guilt beyond a reasonable doubt. The court must view the entire record in the light most favorable to the judgment . . . to determine whether it discloses substantial evidence – that is, evidence which is reasonable, credible, and of solid value – such that a reasonable trier of fact could find the minor guilty beyond a reasonable doubt.' [Citation.]" (*In re Andrew I.* (1991) 230 Cal.App.3d 572, 577.)

Penal Code section 148, subdivision (a)(1) states that "[e]very person who willfully resists, delays, or obstructs any . . . peace officer . . . in the discharge or attempt to discharge any duty of his or her office or employment . . ." is guilty of a misdemeanor. "'"The legal elements of a violation of section [148, (a)(1)] are as follows: (1) the defendant willfully resisted, delayed, or obstructed a peace officer, (2) when the officer was engaged in the performance of his or her duties, and (3) the defendant knew or reasonably should have known that the other person was a peace officer engaged in the

performance of his or her duties. [Citations.]" [Citation.] The offense is a general intent crime, proscribing only the particular act (resist, delay, obstruct) without reference to an intent to do a further act or achieve a future consequence. [Citation.]' [Citation.]" (*People v. Christopher* (2006) 137 Cal.App.4th 418, 431, italics omitted.)

Julio cites the holding in a number of cases to support his contention that he is entitled to avoid a consensual encounter with the police, and therefore when he fled, there was no violation of subdivision (a)(1) of section 148. As stated, Julio is correct on the law, but not as applied to the facts of this case. A police officer may "temporarily detain a suspect based on a 'reasonable suspicion' that the suspect has committed or is about to commit a crime. [Citations.]" (*People v. Bennett* (1998) 17 Cal.4th 373, 386-387.) This detention is considered a limited intrusion justified by special law enforcement interests. (*Id*. at p. 387) "A detention is reasonable under the Fourth Amendment when the detaining officer can point to specific articulable facts that, considered in light of the totality of the circumstances, provide some objective manifestation that the person detained may be involved in criminal activity." (*People v. Souza* (1994) 9 Cal.4th 224, 231; *Terry v. Ohio* (1968) 392 U.S. 1.) And the fact that the offense may have ceased before the detention does not invalidate the detention. (*United States v. Hensley* (1985) 469 U.S. 221, 227-229.)

In this case, when Officer Gentner arrived at the apartment complex, it was for the purpose of investigating a criminal offense based on the information he received from the Buena Park Police dispatcher that five youths were smoking marijuana, and not for the purpose of initiating a consensual encounter. At the point in time when Officer Gentner yelled "stop. Police," and Julio failed to obey the officer's verbal command and continued running, it delayed the officer in the performance of his duties to investigate the five youths hanging out at the apartment complex to confirm or dispel whether they were in fact smoking marijuana. Under these circumstances, fleeing from an officer attempting to effect a lawful detention can constitute delaying a peace officer, provided

the person fleeing knows the officer wishes to detain him. (*People v. Allen* (1980) 109 Cal.App.3d 981, 985-987.)

Although Julio testified that he never heard the officer identify himself or yell a command to stop, the court found otherwise. Faced with two versions of the circumstances of Julio's arrest, the court found the officer to be the more credible witness. Just because Julio testified to facts different than the officer's, does not mean he created a reasonable doubt in the court's mind. Furthermore, the evidence of a single witness is sufficient for proof of any fact (*People v. Rincon-Pineda* (1975) 14 Cal.3d 864, 885) and the credibility of a witness is within the exclusive province of the trier of fact. (*People v. Ochoa* (1993) 6 Cal.4th 1199, 1206.) As the reviewing court, we will not re-weigh the evidence or substitute our evaluation for that of the trier of fact in determining a witness's credibility.

In this case, the court sustained the petition based on it's finding that Officer Gentner was engaged in the performance of his duties as he chased after Julio while ordering him to stop. In finding that Julio failed to yield to the officer's verbal commands, the court stated the officer had a loud voice, Julio appeared to be healthy, and there was no evidence that Julio had trouble hearing or that he was suffering from an ailment that would impair his ability to hear the officer's verbal commands. The court also considered the fact that Officer Gentner was wearing a polo shirt with patches on this chest and shoulders identifying himself as a police officer, he verbally identified himself as a police officer as he chased after Julio, and Julio's statement that he didn't want to get caught doing something wrong, to support the finding that Julio knew or reasonably should have known that Officer Gentner was a police officer engaged in the performance of his duties. As such, we find substantial evidence supports the court's finding that Julio delayed the officer in the performance of his duties and affirm the judgment.

At the disposition hearing, the court declared Julio a ward of the juvenile court and placed him on terms and conditions of probation. Included as a term of probation is the requirement that Julio "submit [his] person and property to search and seizure by any peace officer, probation officer or school official anytime day or night, with or without a warrant, probable cause or reasonable suspicion while on probation." Julio contends the court erred when it imposed the search term as a condition of probation because he was not convicted of possession of marijuana and therefore the search term has no relationship to the offense that was found true, resisting, obstructing, or delaying a peace officer.

The juvenile court has broad discretion in formulating conditions of probation. (*In re Antonio R.* (2000) 78 Cal.App.4th 937, 941.) Despite this broad discretion, the court's discretion is not without limitation. Welfare and Institutions Code section 730, subdivision (b), requires that any term which is imposed, be reasonable and states, "[t]he court may impose and require any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced."

On appeal, the court's exercise of discretion will not be disturbed, absent a manifest abuse of discretion. (*In re Juan G.* (2003) 112 Cal.App.4th 1, 6-7.) A challenge to a condition of probation will "not be held invalid unless it '(1) has no relationship to the crime of which the offender was convicted, (2) relates to conduct which is not in itself criminal, and (3) requires or forbids conduct which is not reasonably related to future criminality . . . .' [Citation.]" (*People v. Lent* (1975) 15 Cal.3d 481, 486.) *Lent* also applies to juvenile court probation orders. (*In re Josh W.* (1997) 55 Cal.App.4th 1, 6.)

In this case, there is nothing about the inclusion of the search term that indicates that it is the result of an abuse of discretion. Although Julio was not tried for possession of a controlled substance, as long as a probation condition "serves the

statutory purpose of '"reformation and rehabilitation of the probationer[]' . . . such condition is '"reasonably related to future criminality"' and will be upheld even if it has no '"relationship to the crime of which the offender was convicted."' [Citation.]" (*People v. Brewer* (2001) 87 Cal.App.4th 1298, 1311.) However, to uphold such a condition, there must be a "factual 'nexus' between the crime, defendant's manifested propensities, and the probation condition. [Citations.] There must be some rational factual basis for projecting the possibility that defendant may commit a particular type of crime in the future, in order for such projection to serve as a basis for a particular condition of probation." (*In re Martinez* (1978) 86 Cal.App.3d 577, 583.) The factual basis should include the minor's propensities as manifested by the present offense and past behavior, and include the minor's entire social history. (*Id.* at p. 581; *In re Frankie J.* (1988) 198 Cal.App.3d 1149, 1153.)

Had the call from dispatch to Officer Gentner in this case complained of minors out after curfew, there would be no factual connection between the offense and the probation condition. However, the call in this case was to investigate four or five young kids smoking marijuana at an apartment complex. The fact that Julio took off running before the officer could confirm or dispel the complaint does not negate the nexus of a controlled substance to the offense in this case.

Furthermore, Julio is exactly the type of minor that pre-emptive probation terms are intended to reach. The disposition report in this case includes a summary of the circumstances surrounding the offense and states that after Julio and the other four subjects were detained, officers working the gang unit arrived and "recognized all five subjects as admitted 'Eastside Buena Park' gang members." Although Julio denied gang membership and having been jumped into the gang, he did admit associating with 'Eastside Buena Park' gang members. The disposition report also includes a synopsis of interviews with Julio and his grandmother who raises him and with whom he resides, and

brief insight into Julio's social history that caused the probation officer to conclude, "[i]t is believed [Julio] is on the track to becoming a gang member."

"The state's purpose in juvenile proceedings is a rehabilitative one distinguishable from the criminal justice system for adults, which has a purely punitive purpose separate from its rehabilitative goals. [Citation.] The proceedings are intended to secure for the minor such care and guidance as will best serve the interests of the minor and the state and to impose upon the minor a sense of responsibility for his or her actions." (*In re Myresheia W.* (1998) 61 Cal.App.4th 734, 740-741.)

To reach this result, "'"the juvenile court must consider not only the circumstances of the crime but also the minor's entire social history. . . ." . . .' . . . We also consider the legislative policies for the juvenile court system when we determine the validity of probation conditions in a juvenile case." (*In re Jason J.* (1991) 233 Cal.App.3d 710, 714-715 [disapproved on other grounds].) As the court in *In re Jason J.* noted in the uncodified preamble to legislative changes to the Welfare and Institutions Code, the Legislature declared: "'(1) The problem of juvenile delinquency should be addressed at its inception rather than after it has progressed to serious criminality. [¶] . . . [¶] (3) The young offender who exhibits the symptoms of future delinquency presents the most significant potential for rehabilitation, yet this young offender has been largely ignored. This approach is a disservice to the community, the parents, and most importantly, to our youth. [¶] '(b) In this regard, it is the intent of the Legislature to implement a program based on a different perspective and strategy toward juvenile delinquency which program is designed to reach our children before they become habitual criminals, and requires the intervention by the juvenile justice system at the earliest signs of drug abuse, gang affiliation, and other antisocial behavior.'" (*Id.* at p. 715.)

As such, the search term in this case is necessary to insure that Julio does not possess any controlled substances, as well as to enforce the other terms of probation

that Julio has not objected to which prohibit Julio from possessing any dangerous, illegal, or deadly weapons, alcoholic beverages, illegal drugs, and controlled substances, and knowingly possessing items that indicate gang membership or affiliation.

DISPOSITION

For the foregoing reasons, the judgment is affirmed in its entirety.